IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

Criminal Revision Case Nos.440, 441 & 442 of 2007
and Miscellaneous Petition Nos.1, 1 & 1 of 2007

1. G.G.Jayaraman
2. G.Gopal
3. G.G.Hari
4. G.G.Ganesh .. Petitioners in
Crl.R.C.Nos.440, 441 & 442/2007

-Vs.-

V.V.S.Manian,
Son of Venkatesa Rao,
Flat No.B-11, Subashree Apartments,
No.2, Lakshmi Narashimnan Street,
T.Nagar, Chennai - 600 017. .. Respondent in
Crl.R.C.Nos.440 & 441/2007

C.Hemalatha
Represented by her Power Agent V.V.S.Manian,
Plot No.94, Kandaswamy Nagar,
Kamarajar Salai, Palavakkam,
Chennai - 600 041. .. Respondent in
Crl.R.C.Nos.442 / 2007

Prayer in all the Criminal Revision Cases: Criminal Revision Cases filed under Sections 379 and 401 of the Code of Criminal Procedure to set-aside the orders dated 21.02.2007 passed in Crl.M.P.Nos.1690, 1691 & 1692 of 2007 respectively in C.A.Nos.44, 45 & 46 of 2007 respectively on the file of the II Additional Sessions Judge, Chennai against C.C.Nos.1005, 1006 & 3805 of 2004 respectively on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai dated 22.1.2007.

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For Petitioners : Mr. L.Rajasekar for Mr.L.Saikumar

For Respondents : Mr. M.Chandrasekaran

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C O M M O N O R D E R

The petitioners are accused 1 to 4 in the private complaints filed under Section 138 of the Negotiable Instruments Act. The respondents are the original complainant in all the three complaints. The three complaints filed by the respondents were taken on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai as C.C.Nos.1005, 1006 & 3805 of 2004 respectively. After trial the learned XVII Metropolitan Magistrate, Saidapet, Chennai by his Judgment dated 22.01.2007 in C.C.Nos.1005, 1006 & 3805 of 2004 has convicted the petitioners for the offence under Section 138 of the Negotiable Instruments Act and sentenced them to suffer simple imprisonment for one year and to pay compensation of the cheque amount of Rs.3,00,000/-, Rs.1,00,000/- and Rs.3,00,000/- respectively and each petitioner was directed to pay Rs.75,000/-, 25,000/- and Rs.75,000/- respectively to the complainant within three months and in default to undergo simple imprisonment for three months.

2. The accused / petitioners preferred criminal appeals in C.A.Nos.44, 45 & 46 of 2007 respectively before the II Additional Sessions Judge, Chennai and their appeals were admitted. The petitioners filed petitions to suspend the sentences imposed on them. Separate orders dated 21.02.2007 passed in Crl.M.P.Nos.1690, 1691 & 1692 of 2007 read as follows:

> a) In Crl.M.P.No.1690 of 2007: Para 4. On either of furnishing cash each deposit or bank guarantee or immovable property security for Rs.3,00,000/- (Rupees three lakhs only) each payable Rs.75,000/- (Rupees seventy five thousand only) being the compensation amount u/s 357 (3) of Cr.P.C. the substantial sentence alone suspended till the disposal of appeal on each executing a bond for Rs.5,000/- (Rupees five thousand only) with two sureties for like sum to the satisfaction of the XVII Metropolitan Magistrate, Saidapet, Chennai and appear before this Court on 21.03.2007 and to appear on subsequent hearing dates.
>
> b) In Crl.M.P.No.1691 of 2007: Para 4. On either of furnishing cash each deposit or bank guarantee or immovable property security for Rs.1,00,000/- (Rupees one lakh only) each payable Rs.25,000/- (Rupees twenty five thousand only) being the compensation amount u/s 357(3) of Cr.P.C. the substantial sentence alone suspended till the disposal of appeal on each executing a bond for Rs.5,000/- (Rupees five thousand only) with two sureties for like sum to the satisfaction of the XVII Metropolitan Magistrate,

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Saidapet, Chennai and appear before this Court on 21.03.2007 and to appear on subsequent hearing dates.

c) In Crl.M.P.No.1692 of 2007: Para 4. On either of furnishing cash each deposit or bank guarantee or immovable property security for Rs.3,00,000/- (Rupees three lakhs only) each payable Rs.75,000/- (Rupees seventy five thousand only) being the compensation amount u/s 357 (3) of Cr.P.C. the substantial sentence alone suspended till the disposal of appeal on each executing a bond for Rs.5,000/- (Rupees five thousand only) with two sureties for like sum to the satisfaction of the XVII Metropolitan Magistrate, Saidapet, Chennai and appear before this Court on 21.03.2007 and to appear on subsequent hearing dates.

In the above revisions, the petitioners are challenging the correctness of that part of the said orders which directs each of the petitioners to deposit or furnish bank guarantee or immovable property security for Rs.3,00,000/- Rs.1,00,000/- and Rs.3,00,000/- and each payable Rs.75,000/-, Rs.25,000/- and Rs.75,000/- respectively being the compensation amount.

3. Mr. L.Rajasekar learned counsel appearing for the petitioners submitted that under Section 389 of the Code of Criminal Procedure, the learned Sessions Judge ought not to have imposed condition while suspending the substantive sentence by directing the petitioners to deposit the amount or furnish security as aforesaid. The learned counsel further submitted that Section 389 of the Code does not give jurisdiction to the appellate court to impose such a condition.

4. Mr.M.Chandrasekaran learned counsel appearing for the respondents supported the impugned order.

5. The learned counsel appearing for the petitioners by relying upon the decision of the Hon'ble Apex Court reported in (2007) 3 SCC (Cri) 209 (Dilip S. Dahanukar Vs. Kotak Mahindra Co.Ltd. and Another) submitted that the learned Sessions Judge erred in imposing a condition to deposit the compensation amount as a condition precedent for the suspension of the substantial sentence. The learned counsel further submitted that as the first petitioner alone is the signatory / drawer of the cheques, the petitioners 2 to 4 being not the drawers of the cheque ought not to have been convicted by the trial court and considering the same the learned Sessions Judge ought not to have imposed any condition to deposit the compensation amount for suspending their sentence.

6. Countering the said submissions, the learned counsel appearing for the respondents by referring to several decisions

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submitted that the conviction of the petitioners by the trial court is based on proper appreciation of evidence on record and the correctness of the conviction of the petitioners 2 to 4 cannot be gone into in the above revisions as the same can be gone into only by the appellate court and further challenge in the revisions are only regarding the correctness of the order of the appellate court imposing the condition to deposit the compensation amount as a condition precedent to suspend the sentence.

7. By relying upon the following observation of the Hon'ble Apex Court reported in 2001 SCC (Cri) 345 (Stanny Felix Pinto Vs. Jangid Builders Pvt. Ltd. and Another) viz.,

> ".....We feel that while suspending the sentence for the offence under Section 138 of the Negotiable Instruments Act it is advisable that the court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal....."

the learned counsel submitted that the appellate court while suspending the sentence is entitled to impose conditions. The learned counsel also placed reliance on the decision of the Bombay High Court reported in 2004 (2) Crimes 511 (Mohamad Hafiz Khan Vs. Anand Finance & Another) wherein it has been laid down as under:

> "Though there could not be imprisonment in default of payment of compensation awarded in terms of Section 357(3) Cr.P.C. yet in an appeal on revision, Court could direct suspension of sentence subject to a condition of default"

The learned counsel also relied upon another decision of the Bombay High Court reported in 2006 (2) Crimes 248 (Maheshwar Dattatraya Kale Vs. Capt. Atul Wasudeo Divekar & Anr.) wherein the High Court confirmed the order of the Sessions Court suspending the substantial sentence on condition the appellant deposits half of the cheque amount holding that there is no illegality in the imposition of such a condition.

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8. I have carefully considered the above submissions made on either side.

9. In the decision reported in (2007) 3 SCC (Cri) 209 (Dilip S. Dahanukar Vs. Kotak Mahindra Co.Ltd. and Another) the Hon'ble Apex Court has observed as follows:

> "55. Unfortunately, the legislature has not made any

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express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. We have noticed hereinbefore that Article 21 of the Constitution of India read with Section 374 CrPC confers a right of appeal. Such a right is an absolute one. In a case where a judgment of conviction has been awarded, the court can release a person on bail having regard to the nature of offence but as also the other relevant factors including its effect on society. A person upon arrest may have to remain in jail as an undertrial prisoner. So would a person upon conviction. A person may also have to remain in jail, in the event he defaults in payment of fine, if he is so directed. But when a direction is issued for payment of compensation, having regard to sub-section (2) of Section 357 of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the court to stay the operation of that part of the judgment whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. A fortiori a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount.

56. An order may not be passed which the appellant cannot comply with resulting in him being sent to prison. The appellate court, in such cases, must make an endeavour to strike a balance. Section 421 of the Code of the Criminal Procedure may take (sic be taken) recourse to, but therefor he cannot be remanded to custody.

68……Thus, while exercising the appellate power, ordinarily, a person should not suffer imprisonment only because the conditions imposed for suspending the sentence are harsh.

72. We therefore, are of the opinion:

(i) in a case of this nature, Sub-section (2) of Section 357 of the Code of Criminal Procedure would be attracted even when the appellant was directed to pay compensation;

(ii) the appellate court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;....."

10. In an unreported decision of this Court dated 18.11.02 rendered in Crl.O.P. Nos. 27878 to 27881 of 2002 Mr.Justice

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A.Packiaraj has observed as follows:

> "2. I am surprised to note that the I Additional Sessions Judge had insisted on further deposit of Rs.75,000/- towards suspending the sentence. I also express my displeasure in the attitude of the Magistrate, namely Judicial Magistrate No.I, who had directed deposit of Rs.25,0 00/- which is a portion of the amount awarded as compensation, before suspending the sentence. It appears both the judicial officers are not aware of the procedure as to how compensation amount has to be collected. Hence the I Additional Sessions Judge is directed not to insist on the deposit of Rs.75,000/-."

11. In another unreported decision of this Court dated 21.08.01 rendered in Crl.O.P. No.16731 of 2001 Mr.Justice Malai Subramanian has observed as follows:

> "3. The learned Sessions Judge has imposed a condition that the petitioner shall pay part of the amount of compensation on or before the particular date and since there was no payment, he chose to dismiss the petition for suspension of sentence. It appears that the appellant has not only challenged the conviction and sentence, but also challenged in appeal the order of compensation. While so, the learned Sessions Judge has imposed a pre-condition for suspension of sentence directing the appellant before him to pay part of the cheque amount. It is an onerous condition to suspend the sentence of simple imprisonment of three months. Therefore since the award of compensation is also a subject matter of appeal, it is not fair to impose such a condition while suspending the sentence of imprisonment."

12. The decision reported in 2001 SCC (Cri) 345 (Stanny Felix Pinto Vs. Jangid Builders Pvt. Ltd. and Another relied upon by the learned counsel for the respondents deals with suspension of the sentence of fine imposed by the trial court. But it does not deal with the suspension of the compensation amount ordered by the trial court. Therefore, the said decision is not applicable to the facts of this case.

13. It is pertinent to point out that the conviction is under Section 138 of the Negotiable Instrument Act. The Hon'ble Apex Court in the case Dalmiya Cement (Bharat) Ltd. Vs. Galaxy Traders and Agencies Ltd. (2002) 6 SCC 463) has held that Section 138 make a civil transaction to be an offence by legal fiction. The Apex Court held that the object of the said provision is to making a special provision by incorporating a strict liability so far as the cheque is concerned. The Apex Court however held that efforts to

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defeat the objectives of law by resorting to innovative measures and methods are to be discouraged.

14. What has been laid down in the decision reported in 2001 (2) SCC 416 (Stanny Felix Pinto Vs. Jangid Builders Pvt. Ltd.) will naturally apply also to a case where compensation has been ordered to be paid. Thus when there is a conviction under Section 138 of the Negotiable Instrument Act, while suspending substantive sentence, it is advisable that the appellate court impose a condition of deposit of the compensation amount keeping in mind the object of Section 138 of the Act. When the amount of compensation is heavy, the Court can direct the deposit of a reasonable amount. Only in exceptional cases, the Appellate Court can grant interim protection without requiring deposit of compensation amount.

15. In the decision reported in (2007) 3 SCC (Cri) 209 (Dilip S. Dahanukar Vs. Kotak Mahindra Co.Ltd. and Another) the apex court after referring to a number of decisions of the Apex Court and the relevant provisions of the Code of Criminal Procedure has held that when a direction is issued for payment of compensation, having regard to Sub Section (2) of Section 357 of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the court to stay the operation of that part of the judgment whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. A fortiori a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount.

16. The Hon'ble Apex Court has further observed in the above Judgment that while exercising the appellate power, ordinarily, a person should not suffer imprisonment only because the conditions imposed for suspending the sentence are harsh. In the said decision, the Hon'ble Apex Court has laid down that the Appellate Court, however, while suspending the sentence, was entitled to put the appellant on terms. The Bombay High Court in the above cited two decisions have only taken the view which is in consonance with the law laid down by the Hon’ble Apex Court in (2007) 3 SCC (Cri) 209. But on the other hand the two unreported decisions of this Court cited above are not in consonance with the above decision of the Hon’ble Apex Court.

17. In view of the decision of the Hon’ble Apex Court reported in (2007) 3 SCC (Cri) 209 (Dilip S. Dahanukar Vs. Kotak Mahindra Co.Ltd. and Another) the contention of the learned counsel appearing for the petitioners that the appellate court after admitting the appeal and while suspending the substantial sentence could not impose a condition on the petitioners to deposit part of the compensation amount awarded by the trial court is not sustainable.

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18. By applying the above said decision of the Apex Court to the facts of the case on hand, the correctness of the orders under challenge is considered it could not be said that as far as the first petitioner is concerned, the condition imposed by the lower appellate court for suspending the substantive sentence imposed on the first petitioner is onerous and harsh. Only ¼th of the compensation amount has been directed to be deposited by the first petitioner. The first petitioner has not made out a case for not imposing such a condition.

19. As far as the petitioners 2 to 4 herein are concerned, they are not the signatories of the cheque in question, their conviction by the trial court prima facie appears to be against the provisions contained under Section 138 of the Negotiable Instruments Act. Admittedly, such a contention has been raised in the memorandum of grounds of appeal in the appeals filed by them before the Sessions Court. Considering the said contention, the learned sessions judge ought not to have imposed any condition for suspending the substantive sentence imposed on them. Therefore, this Court is of the considered view that there is absolutely no justification for imposing the condition on the petitioners 2 to 4 for suspending the substantive sentence imposed on them.

20. In the result, so far as the first petitioner is concerned, orders dated 21.02.2007 passed in the Crl.M.P.Nos.1690, 1691 & 1692 of 2007 respectively by the learned Sessions Judge are confirmed with a modification that time to deposit the sum of Rs.75,000/-, Rs.25,000/- and Rs.75,000/- respectively is extended till 27.11.2007. As far as the petitioners 2 to 4 are concerned, that part of the orders dated 21.02.2007 passed in the Crl.M.P.Nos.1690, 1691 & 1692 of 2007 respectively directing the petitioners 2 to 4 herein to deposit part of the compensation amount as a condition precedent for the suspension of the substantive sentence imposed on them is concerned is hereby set aside and the revisions are allowed.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. II Additional Sessions Judge, Chennai

2. XVII Metropolitan Magistrate, Saidapet, Chennai.

+3ccs to Mr.L.Saikumaar,Advocate Sr 65225 to 65227

SSK (CO)
km/12.11.

Criminal Revision Case Nos.440, 441 & 442 of 2007
and Miscellaneous Petition Nos.1, 1 & 1 of 2007

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